

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOHNNY EDWARD MCMAHON,

Case No. 3:23-cv-00402-MMD-CSD

Petitioner,

ORDER

v.

STATE OF NEVADA, *et al.*,

Respondents.

I. SUMMARY

Petitioner Johnny Edward McMahon, a *pro se* Nevada prisoner, has not properly commenced this habeas action by either paying the standard \$5.00 filing fee or filing an application for leave to proceed *in forma pauperis* ("IFP"). Also before the Court is Petitioner's Petition for Writ of Mandamus (ECF No. 1-1) and Motion for Appointment of Counsel (ECF No. 1-2). Following initial review, the Court concludes that the petition is subject to multiple substantial defects and dismisses this action.

II. BACKGROUND

Petitioner indirectly challenges a 2008 judgment of conviction entered by the Eighth Judicial District Court for Clark County.¹ Petitioner was convicted of three counts of sexual assault of a minor under the age of sixteen, three counts of statutory sexual seduction, and one count of open and gross lewdness. The Nevada Supreme Court affirmed the convictions on appeal.

The Nevada courts denied Petitioner's state habeas corpus petition seeking post-conviction relief. This Court later denied federal habeas corpus relief. *See McMahon v.*

¹The Court takes judicial notice of the online docket records of the Eighth Judicial District Court and Nevada appellate courts. The docket records may be accessed by the public online at <https://www.clarkcountycourts.us/Anonymous/default.aspx> and <http://caseinfo.nvsupremecourt.us/public/caseSearch.do>.

1 *Neven*, Case No. 2:14-cv-00076-APG-CHW, ECF No. 73 (denying § 2254 petition on its
 2 merits as well as a certificate of appealability). The Ninth Circuit then denied a certificate
 3 of appealability. *Id.* at ECF No. 73.

4 **III. DISCUSSION**

5 Petitioner improperly filed his petition as one for “Writ of Mandamus.” Petitioner
 6 challenges a conviction and sentence imposed by the Eighth Judicial District Court for
 7 Clark County. Because Petitioner is in custody under a Nevada judgment of conviction, a
 8 28 U.S.C. § 2254 petition is the only potential avenue of federal relief. *See White v.*
 9 *Lambert*, 370 F.3d 1002, 1005-07 (9th Cir. 2004), *overruled on other grounds by Hayward*
 10 *v. Marshall*, 603 F.3d 546, 555 (9th Cir. 2010) (en banc).

11 In addition, a federal district court does not have appellate jurisdiction over a state
 12 court or state supreme court, whether by direct appeal, writ of mandamus, writ of
 13 prohibition, an exercise of supervisory jurisdiction, or otherwise. *See, e.g., Rooker v.*
 14 *Fidelity Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462,
 15 482-86 (1983); *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003). Generally, the
 16 *Rooker-Feldman* doctrine prevents “a party losing in state court . . . from seeking what in
 17 substance would be appellate review of the state judgment in a United States district
 18 court.” *Henrichs v. Valley View Dev.*, 474 F.3d 609, 611 (9th Cir. 2009) (citation omitted).

19 As noted above, this Court denied federal habeas corpus relief in 2017. *See*
 20 *McMahon v. Neven*, Case No. 2:14-cv-00076-APG-CHW, ECF No. 73. The Antiterrorism
 21 and Effective Death Penalty Act generally limits habeas petitioners to one round of federal
 22 habeas review. 28 U.S.C. § 2244. Petitioner has already received federal habeas review
 23 of his conviction. To receive further collateral review, he must secure permission from the
 24 Ninth Circuit to file a second or successive § 2254 habeas petition.² *See Brown v. Muniz*,
 25 889 F.3d 661, 667 (9th Cir. 2018) (under § 2244(b)(3), federal district courts lack
 26

27 ²The All Writs Act, 28 U.S.C. § 1651, allows the Court to grant extraordinary writs
 28 where the Court has jurisdiction. *Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28,
 33-34 (2002). Thus, it does not provide an independent basis for jurisdiction for a petition
 for a writ of mandamus or prohibition. *See id.*

1 jurisdiction to entertain a petitioner's successive habeas petition absent permission from
2 the court of appeals to do so).

3 **IV. CONCLUSION**

4 It is therefore ordered that the Clerk of Court will file the Petition for Writ of
5 Mandamus (ECF No. 1-1) on the docket.

6 It is further ordered that the Petition for Writ of Mandamus (ECF No. 1-1) is denied
7 for lack of jurisdiction.

8 The Clerk of Court is directed to enter judgment accordingly and close this case.

9 DATED THIS 1st Day of September 2023.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

11 MIRANDA M. DU
12 CHIEF UNITED STATES DISTRICT JUDGE